

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	McGee et al.	Confirmation No.:	7972
Serial No.:	10/810,325	Art Unit:	1625
Filed:	March 25, 2004	Examiner:	D. Margaret M. Seaman
For:	COMPOUNDS FOR THE MODULATION OF PPAR γ ACTIVITY	Attorney Docket No.:	T-99-008-3/US (11134-123-999)

**SECOND PETITION TO REVIVE
UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 C.F.R. § 1.137(b)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Notice of Abandonment of the above-identified application mailed June 25, 2007, and the Decision on Petition Mailed February 13, 2008, Applicants respectfully petition the United States Patent and Trademark Office ("USPTO") to revive the instant application under 37 C.F.R. § 1.137(b) on the ground that the application was unintentionally abandoned. A copy of the Notice of Abandonment is attached with this petition as Exhibit A. Applicants previously petitioned for revival of the instant patent application on October 16, 2007. A copy of the Decision on Petition relating to Applicants' first Petition is attached as Exhibit B.

Applicants hereby state that the entire delay from the date of abandonment to the date this petition is filed was unintentional.

Applicants submit herewith a copy of the Response originally filed June 15, 2007, and a Request for Continued Examination. Applicants respectfully submit that this filing constitutes a complete reply as required by 37 C.F.R. § 1.137(b).

Accordingly, Applicants hereby respectfully request that the application be revived, and that the Response and Request for Continued Examination be accepted and made of record into the file of the present application.

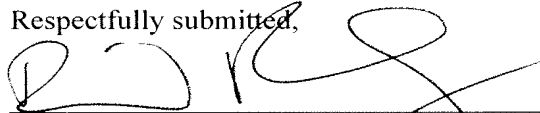
Application No. 10/810,325
Attorney Docket No. T-99-008-3/US (11134-123-999)
Petition to Revive Unintentionally Abandoned Application

CONCLUSION

Applicants hereby respectfully request that the Patent Office revive the above-identified patent application. Please charge the required fee of \$1540.00, and any other fee that may be required in connection with the present application, to Jones Day's Deposit Account No. 50-3013 (Referencing No. 893053-999123).

Date: April 28, 2008

Respectfully submitted,


56,056

David C. Pauling (Reg. No.)

For: Anthony M. Insogna (Reg. No. 35,203)

JONES DAY

222 East 41st Street

New York, New York 10017

(212) 326-3939

Application No. 10/810,325
Attorney Docket No. T-99-008-3/US (11134-123-999)
Petition to Revive Unintentionally Abandoned Application

EXHIBIT A

T99-008-US-CNT2
C7S

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,325	03/25/2004	Lawrence R. McGee	T99-008-3/US	7972
30174 7590 06/25/2007 AMGEN INC. 1120 VETERANS BOULEVARD SOUTH SAN FRANCISCO, CA 94080				
EXAMINER SEAMAN, D MARGARET M				
ART UNIT		PAPER NUMBER		
1623				
MAIL DATE		DELIVERY MODE		
06/25/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

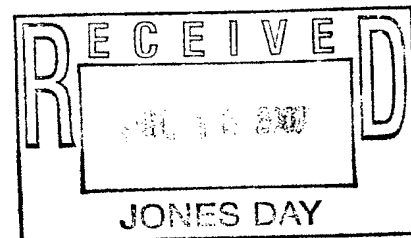
The time period for reply, if any, is set in the attached communication.

RECEIVED

JUL 09 2007

9
Rebecca L. S. Vire
8/1/2007

11134-125-2007




Notice of Abandonment	Application No.	Applicant(s)	
	10/810,325	MCGEE ET AL.	
	Examiner	Art Unit	
	/D. Margaret Seaman/	1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 18 December 2006.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


 /D. Margaret Seaman/
 Primary Examiner
 Art Unit: 1625

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Interview Summary

Application No.

10/810,325

Applicant(s)

MCGEE ET AL.

Examiner

/D. Margaret Seaman/

Art Unit

1625

All participants (applicant, applicant's representative, PTO personnel):

(1) /D. Margaret Seaman/

(3) _____

(2) Christopher Smith

(4) _____

Date of Interview: 20 June 2007Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____

Claim(s) discussed: _____

Identification of prior art discussed: _____

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: A call was made to determine if there was a response made to the office action mailed 12/18/2006. No response has been received.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an
Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2. Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make a substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner.
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Application No. 10/810,325
Attorney Docket No. T-99-008-3/US (11134-123-999)
Petition to Revive Unintentionally Abandoned Application

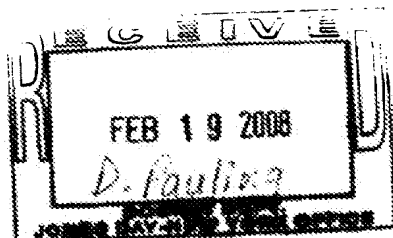
EXHIBIT B



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017



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FEB 13 2008

OFFICE OF PETITIONS

In re Application of
Lawrence R. McGee, et al.
Application No. 10/810,325
Filed: March 25, 2004
Attorney Docket No. 11134-123-999

ON PETITION

This is a decision in response to the petition, filed October 16, 2007, which is being treated as a petition under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. ' 704.

The application was held abandoned for failure to timely respond to the final Office action mailed December 18, 2006. A Notice of Abandonment was mailed on June 25, 2007. On October 16, 2007, the present petition was filed.

Petitioner asserts that the abandonment resulted from an error on the part of the U.S. Patent and Trademark Office. Petitioner explains that a timely response to the Office action of December 18, 2006 was submitted in the form of a Notice of Appeal, with an appropriate 3-month petition for extension of time, on June 15, 2007. However, petitioner notes that the papers filed on June 15, 2007 were directed to an incorrect application number. It is also noted that the post card receipt includes a different incorrect application number. A response that has an incorrect application number is handled in accordance with MPEP 508.03. If a paper having an incorrect application number contains sufficient information to identify the correct application and it was timely filed, the holding of abandonment will be withdrawn.

In reviewing the papers submitted, it is concluded that the information contained thereon was sufficient to associate the papers with the correct application. The Notice of Appeal, Petition for Extension of Time and fees filed on June 15, 2007 have been located in the incorrect application. The papers filed June 15, 2007 will be moved from the incorrect application to the present application where they were intended. However, it is now clear that this application became abandoned as a result of petitioner's failure to prosecute this application by filing an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1).

As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed June 15, 2007, and no extensions of time under the provisions of 37 CFR 1.136(a) were

obtained, the appeal is considered dismissed and the proceedings as to the rejected claims are terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on August 16, 2007. See MPEP 1215.04.

A grantable petition under 37 CFR 1.137(b)¹ must be accompanied by: (1) the required reply,² unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The petition lacks item 1.

It is noted that petitioner included a Notice of Appeal and fee, as well as a 3-month extension of time and with the present petition. Since the application became abandoned for a failure to timely file **the Appeal Brief under 37 CFR 41.37(a)(1) and fee set forth in 37 CFR 41.20(b)(2)**, not as a result of a failure to respond to the final Office action noted in the Notice of Abandonment mailed June 25, 2007, the Notice of Appeal filed October 16, 2007 will not be processed. Further, the present petition for extension of time is unnecessary since any extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See *In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Petitioner should note that the proposed reply required for consideration of a petition to revive must be an Appeal Brief (and fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2).

Under the circumstances, the \$510 appeal fee and the \$1,050 extension fee will be applied toward the \$1,540 petition fee for the present petition, resulting in an overpayment of \$20. The \$20 overpaid is subject to refund, upon the filing of a request therefor, or may be applied towards the fee required for an Appeal Brief, if one is being filed in response to this decision.

Any request for refund of the \$20 overpaid must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions

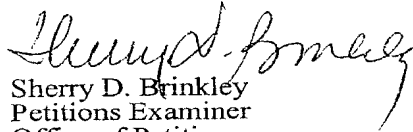
¹ As amended effective December 1, 1997. See *Changes to Patent Practice and Procedure*; Final Rule Notice, 62 *Fed. Reg.* 53131, 53194-95 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 119-20 (October 21, 1997).

² In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions